



## **Fee Waiver Criteria**

The 1986 FOIA amendment mandates reduced or waived fees if disclosure "is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the Government and is not primarily in the commercial interest of the requester." 5 U.S.C. 552(a)(4)(A)(iii).

The Department of Agriculture has published FOIA guidelines for agencies to follow in making fee waiver determinations. The guidelines, found at Title 7 CFR, Subtitle A, Part 1, Subpart A, Appendix A, Section 6(a)(1), list six factors to be taken into consideration when assessing fee waiver requests:

- (1) The subject of the request, i.e., whether the subject of the requested records concerns "the operations or activities of the government;"
- (2) The informative value of the information to be disclosed, i.e., whether the disclosure is "likely to contribute" to an understanding of government operations or activities. (The requester bears the burden of identifying "with reasonable specificity" the public interest served.)
- (3) The contribution to an understanding of the subject by the general public likely to result from disclosure, i.e., whether disclosure of the requested information will contribute to "public understanding." (Factor 3 concerns whether disclosure of the information will contribute to an understanding by "a reasonably broad audience of persons interested in the subject," and requires the requester to have the ability to disseminate the information to the general public. Requesters cannot satisfy the standard merely by representing that they will make the information available to others. Requesters have the burden of demonstrating with particularity that the information will be communicated to the public.)
- (4) The significance of the contribution to public understanding, i.e., whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. (The public benefit should be "identified with reasonable specificity".)
- (5) The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so,
- (6) The primary interest in disclosure, i.e., whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." (Factor 6 requires an agency to balance the requester's commercial interest against the identified public interest in disclosure and determine which interest is "primary.")

